

# In the United States Court of Federal Claims

Nos. 98-5345 T & 98-5346 T

(Filed: August 18, 2009)

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 )  
SAMUEL D. LIEBOVICH )  
ERNA LIEBOVICH, )  
 )  
Plaintiffs, )  
v. )  
 )  
UNITED STATES, )  
 )  
Defendant. )  
\*\*\*\*\* )

## ORDER

Pending before the court is the parties' Joint Motion for Relief From Final Judgment and for Consolidation, and Stipulation for Entry of an Amended Judgment, filed July 20, 2009. The parties' motion was filed pursuant to Rule 60(b) of the Rules of the United States Court of Federal Claims ("RCFC") and is predicated on the fact that the judgment previously entered by this court awarding plaintiffs Erna Liebovich and Samuel D. Liebovich a refund for tax year 1985, *see Gingerich v. United States*, 78 Fed. Cl. 164, 171 (2007), has been satisfied through an independently issued refund by the IRS.

## **BACKGROUND**

This case involved 22 consolidated tax refund cases brought by direct and indirect partners of the General Information Associates Partnership, docket numbers 98-533T and 98-5330T through 98-5350T. *Gingerich*, 78 Fed. Cl. at 165. On August 24, 2007, the court entered a final judgment adopting the computations provided by the plaintiffs for the amounts due them by the IRS. *Id.* at 171.

Plaintiffs Samuel D. Liebovich and Erna Liebovich, husband and wife, were assigned docket numbers 98-5345T and 98-5346T, respectively. However, because they filed joint tax

returns, any refunds must be paid to them jointly. Accordingly the final judgment granted Samuel and Erna Liebovich was a joint award.

The judgment orders the government to refund the Liebovichs jointly specific amounts for each of the tax years 1983, 1984, 1985, and 1986. However, the parties state in their joint motion that the IRS has now independently refunded to plaintiffs Erna and Samuel Liebovich the amount set forth in the judgment for the 1985 tax year.

### **ANALYSIS**

RCFC 60(b)(5) and (6) provide in pertinent part that a court may relieve a party from a judgment where “the judgment has been satisfied, released, or discharged . . . ; or [for] any other reason that justifies relief.” Here, the parties agree that the amount set forth in the judgment for the 1985 tax year has now been satisfied by an IRS refund. Therefore the judgment should be amended to remove a refund for plaintiffs as to tax year 1985.

### **CONCLUSION**

The parties’ joint motion for relief from judgment is GRANTED. The judgment entered on August 24, 2007 shall be amended to strike the award to Erna and Samuel Liebovich. The clerk is directed to consolidate Fed. Cl. Nos. 98-5345 T and 98-5364 T and enter a new judgment in the resulting consolidated case awarding Samuel and Erna Liebovich the refunds attributable to them set forth on page 2 of the August 24, 2007 judgment for tax years 1983, 1984, and 1986. Interest shall be paid to plaintiffs “at the overpayment rate established under [I.R.C. §] 6621.” I.R.C. § 6611(a). No costs.

IT IS SO ORDERED.

s/ Charles F. Lettow  
Charles F. Lettow  
Judge